

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

CUBIST PHARMACEUTICALS LLC,

Plaintiff,

v.

MYLAN PHARMACEUTICALS INC., MYLAN  
INC., MYLAN N.V. AND MYLAN  
LABORATORIES LIMITED,

Defendants.

Civil Action No. 3:20-cv-03168-BRM-ZNQ

*Document Filed Electronically*

**STIPULATION AND ORDER OF DISMISSAL**

Plaintiff Cubist Pharmaceuticals LLC (“Cubist”) and Defendants Mylan Pharmaceuticals Inc., Mylan, Inc., Mylan N.V., and Mylan Laboratories Limited (collectively, “Mylan”), subject to the approval of the Court, stipulate to the following and consent to the form and entry of this Order.

**WHEREAS**, on March 23, 2020, Cubist filed a Complaint for Patent Infringement against Defendants Mylan Pharmaceuticals Inc., Mylan, Inc., and Mylan N.V. for one or more claims of U.S. Patent No. 9,138,456 (“the ’456 patent”) (ECF No. 1);

**WHEREAS**, on June 5, 2020, Defendants Mylan Pharmaceuticals Inc., Mylan, Inc., and Mylan N.V. filed a Motion to Dismiss for Improper Venue and Failure to State a Claim (ECF No. 11);

**WHEREAS**, on July 6, 2020, Cubist filed an opposition to Mylan’s Motion to Dismiss (ECF No. 29);

**WHEREAS**, on July 15, 2020, Cubist amended the Complaint to add a declaratory judgment claim for infringement of U.S. Patent No. 8,835,382 (“the ’382 patent”) and to add Mylan Laboratories Limited as a defendant in this action (ECF No. 36);

**WHEREAS**, on April 13, 2020, in an unrelated matter, *Celgene Corporation v. Mylan Pharmaceuticals Inc. et al.*, Case No. 2-17-cv-03387-ES-MAH (D.N.J.), Defendants Mylan Pharmaceuticals Inc., Mylan, Inc., and Mylan N.V. (the “Mylan Defendants”) filed a Motion to Dismiss Plaintiff’s Complaint for Improper Venue and Failure to State a Claim (2:17-cv-03387, ECF No. 687) (“the *Celgene* matter Motion to Dismiss”);

**WHEREAS**, on August 6, 2020, for purposes of this Action only, Cubist and Mylan agreed on a Stipulation and Order to be Bound by the venue decision in the *Celgene* matter Motion to Dismiss (“Agreement To Be Bound”) (ECF No. 43);

**WHEREAS**, on September 2, 2020, the Court in the *Celgene* matter granted the Mylan Defendants’ Motion to Dismiss Plaintiff’s Complaint for Improper Venue and Failure to State a Claim and dismissed Celgene’s claims against the Mylan Defendants (*see* ECF No. 783 in the *Celgene* matter);

**WHEREAS**, pursuant to the Court’s Order regarding the Agreement To Be Bound, the parties request that the above captioned matter be dismissed without prejudice for lack of venue;

**WHEREAS**, all parties who appeared in the above-captioned suit consent to this stipulation and agree to its provisions; and


**WHEREAS**, there is good cause for the requested relief;

IT IS HEREBY ORDERED this 10th day of Sept. 2020, that:

1. The above-captioned matter shall be dismissed without prejudice for lack of venue;  
and

2. Each party shall bear its own costs and attorney's fees with respect to any claim,  
counterclaim, or defense.

SO ORDERED this 10th day of September, 2020:

  
\_\_\_\_\_  
The Honorable Brian R. Martinotti  
District Court Judge

**STIPULATED AND AGREED TO BY:**

**OF COUNSEL:**

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